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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

JOSEPH GIBSON and RUSSELL SCHULTZ,

Plaintiffs,

v.

MIKE SCHMIDT, in his official capacity as
District Attorney of Multnomah County,
Oregon, MULTNOMAH COUNTY
DISTRICT ATTORNEY'S OFFICE, and
BRAD KALBAUGH, in his official capacity
as a Multnomah County Deputy District
Attorney,,

Defendants.

Case No. 3:20-cv-01580-IM

DEFENDANTS' OBJECTION TO
MODIFICATION TO PROTECTIVE ORDER

Defendants oppose any modification to the protective order in this case, because this
Court does not have jurisdiction. The protective order approved by this Court does not have a

provision for retaining jurisdiction over any matter arising from the motion for preliminary injunction now that the case has been dismissed for lack of jurisdiction.

Federal courts are courts of limited jurisdiction. “Without jurisdiction the court cannot proceed at all in any cause. Jurisdiction is power to declare the law, and when it ceases to exist, the only function remaining to the court is that of announcing the fact and dismissing the cause.” *Steel Co. v. Citizens for a Better Environment*, 523 U.S. 83, 94 (1998). Accordingly, federal courts are under a continuing duty to confirm their jurisdictional power and are even “obliged to inquire *sua sponte* whenever a doubt arises as to [its] existence....” *Mt. Healthy City Sch. Dist. Bd. of Educ. v. Doyle*, 429 U.S. 274, 278 (1977) (citations omitted).

In *Giese v. Bostik, Inc.*, 2017 WL 1375628 (S.D. Cal. Apr. 14, 2017), plaintiffs had filed a class action that was ultimately dismissed for lack of subject matter jurisdiction. As in this case, before the question of jurisdiction was evaluated and the action dismissed, the *Giese* court had granted the parties' joint motion for entry of a protective order. The parties had then engaged in discovery and exchanged confidential information and materials subject to the terms of the protective order.

After the action was dismissed, plaintiffs refiled their case in state court, and defendant removed the action to a different federal court. The plaintiffs filed an *ex parte* application for an order clarifying or modifying the protective order originally entered. The court declined to do so. *Id.* at *2. The court concluded that based on its lack of subject matter jurisdiction, it lacked the authority to issue any further rulings with respect to the enforcement of the protective order that had been entered in this case. *Id.* at *5.

This Court has already determined that it lacks jurisdiction over Plaintiffs' claims under the exemption doctrine expressed in *Younger v. Harris*, 401 U.S. 37 (1971). Oregon state courts have different policies and procedures regarding protective orders. Plaintiffs should look to those policies and procedures rather than have this Court modify the protective order for a case that is now closed.

DATED March March 15, 2021.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on March 15, 2021, I served the foregoing DEFENDANTS' OBJECTION TO MODIFICATION TO PROTECTIVE ORDER upon the parties hereto by the method indicated below, and addressed to the following:

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